IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.803 OF 2004

Mr Ravindra Palekar, .. Petitioner
(Orig.plff)

Vs

M/s Shirin Enterprises .. Respondent
(Orig.deft)

Mr Anilkumar Patil, for the petitioner (Absent).

Ms P.U.Badadum, for the respondent.

WRIT PETITION NO.802 OF 2004

Mrs Rajashree Ravindra Palekar .. Petitioner
(Orig.plff)

Vs

M/s Shirin Enterprises .. Respondent
(Orig.deft)

Mr Anilkumar Patil, for the petitioner.(Absent)

Ms P.U.Badadum, for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 01.12.2005

PC:

1. None appears for the petitioner. Heard the learned counsel for the respondent.

2. The orders impugned in both the writ petitions are identical. Even relevant dates are similar. There is no difference except the fact that the plaintiffs-petitioners in both the suits are different. Hence, these writ petitions are being disposed of by common judgment.

3. Both the writ petitions are directed against the order dated 30.10.2003 passed by II Jt. Civil Judge, Jr Dn, Thane below Exhibit-18. Applications-Exhibit 18 in both the petitions were filed by the petitioners under Order 8 rule 1 of the Code of Civil Procedure in their respective suits and prayed for "no written statement order" against the respondent-defendant. Admittedly, the written statement was filed on 15.10.2003 which was beyond 90 days as prescribed under Order 8 rule 1. The delay in filing the written statement was, however, negligible and that was condoned by the trial Court and allowed the defendant to place their written statement on record. The application-Exhibit-18 was accordingly rejected.

4. The order was challenged mainly on the ground that amended provisions of Order 8 rule 1 are mandatory

in character and the defendant cannot be allowed to file written statement beyond the period of 90 days.

5. This Court had an occasion to consider the provisions of Order 8 rule 1 in **Shailja A. Sawant Vs Sayajirao Ganpatrao Patil, 2004 (2) Mh.L.J. 419** wherein it was observed that the provisions of order 8 rule 1 are directory in character and not mandatory and, therefore, in a given case the Court has power to extend the time and/or to allow the defendant to file written statement beyond the time prescribed under Order 8 rule 1. The said judgment has been confirmed by the Division Bench of this Court in **Chintaman Sukhdeo Kaklij and ors Vs. Shivaji Bhausaheb Gadhe & Ors , 2004 (5) Bom.C.R.573**. Recently, the Apex court has upheld the aforestated view taken by this Court in **Kailash vs. Nankhu and others, (2005) 4 Supreme Court Cases 480.**

6. Keeping the settled position of law in view and considering the facts and circumstances of this case, I find absolutely no merits in these petitions warranting interference by this Court in its extraordinary jurisdiction under Article 227 of the Constitution of India. The writ petitions fail and are dismissed as such.

(D.B.Bhosale,J.)